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IN THE

Supreme Court of the United States

October Term, 1964

COLUMBIA ARTISTS MANAGEMENT INC. and COMMUNITY CONCERTS, INC.,

Appellants.

against

UNITED STATES OF AMERICA; SUMMY-BIRCHARD, INC.; NATIONAL CONCERT AND ARTISTS CORPORATION; and CIVIC CONCERT SERVICE, INCORPORATED,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF OF APPELLEE SUMMY-BIRCHARD, INC.

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Statement

Summy-Birchard Company (incorrectly referred to in the caption as Summy-Birchard, Inc.) was not a party to the original proceedings which lead to the consent judgment of October 20, 1955. It acquired National Concert and Artists Corporation and Civic Concert Services Incorporated in 1961, or rather what remained of their operations, and is thus by the terms of the decree bound thereby.

It participated in the proceeding below, before Judge Tyler.

It may be termed a party to an alleged conspiracy only in the sense that it is forced to partake to avoid being an innocent bystander.

Argument

In the present posture of the industry in which Columbia is the "giant" and Summy-Birchard is one of a few small competitors, the consent judgment in its present form serves no purpose.

This Court has stated, in *United States* v. *Loew's Inc.* that "to ensure . . . that relief is effectual, otherwise permissible practices connected with the acts found to be illegal must sometimes be enjoined" 371 U. S. 38, 53 (1962).

Our problem here is how to provide competition within the confines of a consent judgment when the major competitor, Columbia, holds most of the trump cards in the form of the major artists.

The Court below struck down one attempt by Summy-Birchard to compete in its "modified selective plan" for concert service. On the other hand, it provided leeway in the form of limiting control by Columbia over the resale prices of its artists.

CONCLUSION

Summy-Birchard Company is concerned only with having an opportunity to survive in this area of business. Without an imaginative interpretation, the consent judgment is a noose, not a life preserver.

Respectfully submitted,

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